

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY BAYES and PHILIP BAYES,

Plaintiffs,

v.

BIOMET, INC., BIOMET ORTHOPEDICS,
LLC, BIOMET U.S. RECONSTRUCTION,
LLC, BIOMET MANUFACTURING, LLC
f/k/a BIOMET MANUFACTURING CORP.,

Defendants.

Case No. 4:13-cv-00800-SRC

DEFENDANTS' MOTION FOR NEW TRIAL
OR, IN THE ALTERNATIVE, FOR REMITTITUR

As discussed in Biomet's contemporaneously filed motions, Biomet maintains that it is entitled to entry of judgment in its favor as to all of Plaintiffs' claims, either based on the verdict, *see* Biomet's Motion to Amend the Judgment, Dkt. 437, or as a matter of law notwithstanding the verdict, *see* Biomet's Renewed Motion for Judgment as a Matter of Law, Dkt. 439.

Should the Court deny Biomet's requests for a judgment in its favor, Biomet moves in the alternative for a new trial on all issues. As more fully set forth in Biomet's memorandum filed contemporaneously with this motion, this Court should grant Biomet a new trial based on the jury's inconsistent verdict and because the jury verdict for Plaintiffs on their claim of negligent design was against the weight of the evidence and resulted in a manifest injustice. Biomet is also entitled to a new trial based on the errors at trial, including but not limited to the erroneous omission of Biomet's affirmative converse jury instruction, misconduct by Plaintiffs' attorneys, and the effects of the COVID-19 pandemic on the trial and the jury. In the alternative, Biomet

urges the Court to grant a new trial or a remittitur of the jury's grossly excessive award of \$21 million in compensatory damages to Plaintiffs.

WHEREFORE, if the Court denies Defendants' motion for judgment based on the verdict or as a matter of law, Defendants urge the Court in the alternative to grant them a new trial on all issues. Finally, again in the alternative, Defendants urge the Court to grant their motion for remittitur of the jury's excessive damage award of \$21 million.

Dated: December 18, 2020

/s/ John P. Mandler

John P. Mandler
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7221
Facsimile: (612) 766-1600
john.mandler@faegredrinker.com

Adrienne F. Busby (*admitted pro hac vice*)
Andrew L. Campbell (*admitted pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
300 North Meridian Street, Suite 2500
Indianapolis, Indiana 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
adrienne.busby@faegredrinker.com
andrew.campbell@faegredrinker.com

Tom Joensen (*admitted pro hac vice*)
Stephanie Koltookian (*admitted pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309
Telephone: (515) 248-9000
Facsimile: (515) 248-9010
tom.joensen@faegredrinker.com
stephanie.koltookian@faegredrinker.com

Troy A. Bozarth, No. 5209515
M. Elizabeth Dyer Kellett, No. 64954
HEPLERBROOM LLC

211 North Broadway, Suite 2700
St. Louis, Missouri 63102
Telephone: (314) 241-6160
Facsimile: (314) 241-6116
tab@heplerbroom.com
edk@heplerbroom.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on December 18, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

James D. O'Leary
Michael J. Quillin
Michael S. Druse
O'LEARY, SHELTON, CORRIGAN, PETERSON, DALTON & QUILLIN
The University Tower
1034 S. Brentwood Blvd., Penthouse 1-A
St. Louis, MO 63117

Darin L. Schanker
John Christopher Elliott
Melanie Sulkin
BACHUS & SCHANKER LLC
101 West Colfax, Suite 650
Denver, CO 80202

Zachary L. Wool
BARRIOS, KINGS DORF & CASTEIX, LLP
701 Poydras Street, Suite 3650
New Orleans, LA 70139

/s/ John P. Mandler